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WILLIAM LILLEY III
PRESIDENT

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The Secretary
Office of Managing Director
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

COMMENTS REGARDING DOCKET NO. 92-266
CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992

I am writing in regard to your sections 31-38 (pp. 20-26) in Docket No. 92-266 regarding cable rate/price regulation. I am writing based on my own extensive experience directing a number of areas of Federal regulation.

i) From 1973 to 1975, I was HUD Deputy Assistant Secretary for Policy Development; I had day-to-day charge of HUD's numerous regulatory areas in which the Department exercised federal standard setting for the quality of housing, equal opportunity in housing, and numerous related fields involving housing, e.g. urban renewal, model cities, special revenue sharing and flood plan protection, among others;

ii) From 1975 to 1977, as Deputy Director and then Director of the U.S. Council on Wage and Price Stability, I had day-to-day charge of the Council's numerous efforts to regulate other Federal agency regulatory efforts so as to mitigate the inflationary effect of any proposed Federal regulation. It was under my direction that the Council pioneered in requiring agencies to consider (if not adopt) cost-benefit analysis techniques and, as important, pioneered in prodding agencies to replace

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"Federal-Command-Control" type regulatory mechanisms with "performance-requirement" type regulatory mechanisms. It is important to note that these regulatory innovations were bipartisan in spirit; they were embraced and pursued aggressively by the successive Carter Administration and have become accepted canons of regulatory thinking at both the American Enterprise Institute and the Brookings Institution where much of the groundbreaking intellectual work was initiated and subsequently pursued.

From that career vantage point, I, like many others from all parties and all philosophies, have pursued ways to streamline the Federal regulatory role so that it is more flexible, more market responsive, more local oriented, less intrusive and less costly than the traditional "command-control," rigid Federal-standard style of regulation typical of 1960's regulation. While some of the more intellectually glamorous breakthroughs have come in the environmental field where even private markets now exist to trade pollution rights, the recent FCC proposal to adopt tentatively the benchmark-Local Service Price Index regulatory mechanism for reviewing cable rate increases also is a major and very positive breakthrough in Federal regulatory thinking.

The benchmark-Local Service Price Index approach discussed on pages 23 to 26 has the important advantages of being:

(1) entirely local, therefore accommodating a business which is inherently local, particularly from the consumer's point of view;

(2) flexible and self-adjusting; the "benchmark" for local cable rates would move as all other local service prices would move on a year-to-year basis;

(3) non-intrusive; businesses have to match the local pricing marketplace, which they have to anyway, and not some Federal standard which may or may not be locally relevant;

(4) non-costly; neither the cable companies, nor the municipalities, nor the FCC have to retain costly staff to develop, maintain, and verify mountains of data measuring the various costs of thousands of cable systems;

(5) consumer-oriented; "reasonableness" or "unreasonableness" of rates is measured by what the local consumer actually buys locally; the local consumer knows about comparative local brand name services and non-brand-name services available in the local marketplace and knows their prices; a Local Service Price Index does not suffer from the weaknesses inherent in the CPI, or even more so the PPI, in that no one actually buys anything at the price-increase rate described in the CPI or PPI since everyone buys locally and the CPI and PPI are nationally aggregated estimates of what all consumers are estimated to be buying;

(6) easy to construct; such a Local Service Price Index is not difficult to construct; my associates and I have constructed such indices in a number of markets for various telephone and cable companies over the past several years; all that is required is a willingness to treat local pricing changes as seriously as price increases aggregated up to the national or regional level;

(7) increased confidence factor; as someone who has worked in several areas of federal regulation, written about them and followed their alleged successes and failures in the media, I urge the Commission to remember how important it is that the consuming public have confidence in any Federal regulatory approach, especially one for cable television which is so popular and heavily consumed. In this regard, it is essential that the media both understand and have some degree of confidence in the approach taken, especially the local media (both print and electronic). The benchmark-Local Service Price Index approach is simple, graphic, compelling, and understandable to a local reporter since he or she actually consumes and probably reports on the other local service price changes which are used to benchmark the cable price increase. In this

regard, I commend the Congress and the Commission for recommending a regulatory approach which is neither cumbersome nor costly; regulating a business so local, so varied, and so widely consumed runs the serious risk of widespread consumer and media criticism -- charges of incompetence, inflexibility and extremism -- if the Federal approach taken is not simple, compelling and congruent with <u>local</u> price changes.

(8) minimal Federal visibility; in such a complex and inherently controversial area, and one where there are thousands of potential points of regulatory activity, it is important that the Federal process role be minimized; in this regard, it is especially important that there is not an ongoing, endlessly readjusting Federal-national-standard-setting process. If that happens, it will become a political as well as an administrative nightmare.

<u>Possible arguments against the benchmark - Local Service Price Index Approach</u>: Opposition to this approach probably will come from three different schools of thought --

(1) those who oppose it because it is new and different;

(2) those who say it cannot be done or is too difficult to do;

(3) those who fear that someone (i.e., cable companies) will "get away with something" unless there are crystal-clear, putatively tough Federal standards

1) The Commission should be applauded for dismissing, in advance, arguments against the benchmark - LSPI approach because it is new. Too often in the 1960's and early 1970's as the Federal regulatory role was expanding rapidly, the Federal government stuck rigidly with its inflexible "command-control" approach because that was the approach with which it was comfortable and with which new regulations could be drafted swiftly. The unhappy results from this approach were so numerous and so widespread that there was a public backlash against government in

general and a substantial effort by Federal regulatory officials to find more cost-effective regulatory approaches to meet Congressionally-mandated statutory goals.

2) The Commission also dismisses in advance arguments against the benchmark-LSPI approach on the grounds that a sufficiently rigorous and comprehensive locally based index of service price increases could not be constructed. The Commission points out on p. 25 some of the items that such a local index would measure, namely among many other possible candidates:

movie theaters	college sports tickets
hotel room prices	bridge tolls
ski lift fees	community college tuition credit fees
golf greens fees	newspaper classified ad rates
professional sports tickets	many, many others

The above list is just a beginning. For any one locality, the menu of meaningful local services would vary depending upon each locality's peculiar mix of available and popular services, and should embrace those widely-consumed local services which do not vary over time and substantially in their inherent content. Prices for all these services are readily available. In regard to availability, I note that the Federal Government, starting in 1993, will measure the size of pay increases to Federal civilian employment <u>not</u> on a Federal standard, such as the CPI, but on 28 separate price indices measuring overall price increases for the 28 metropolitan areas where there are the largest or most geographically distinct concentrations of Federal Government workers. It is important to note that this management reform in the critically important way in which taxpayers compensate Federal Government workers has been applauded widely as <u>fairer</u>, <u>more cost-effective</u> and <u>more comprehensible</u> than the old way of yoking a widely-dispersed Federal workforce to one Federal standard. The reason why the "reform" has been received so positively is because it is so inherently commonsensical; the reform is congruent with how everyone else in the economy sees the cost of living rising -- and that is at the local level.

3) It is conceivable that the Commission could receive the most opposition from those who fear that the benchmark-LSPI approach is not "tough" enough and that local cable companies will "get away" with something unless there is a tough and flat Federal standard (e.g., the CPI, or 6%, or whatever) backed up by stern Federal regulators allegedly anxious to mete out discipline. Those who take this approach will make a fatally flawed argument.

First, they will overlook or minimize the reality that <u>any</u> Federal approach invariably will include a <u>waiver</u> escape hatch for those companies which, for whatever reason, fall outside the "tough" Federal mechanism. The tougher the Federal approach and the more rigid the Federal approach, then the greater the number of waiver requests, the greater the involvement of Congressmen responding to local constituents and the greater the number of media stories on the inadequacy of the Federal Government's regulatory skills.

Second, some who would argue for a truly Draconian Federal regulatory approach do so out of anti-business animus. While such an animus might or might not be justified, the problem with it <u>in the regulatory world</u> is that its manifestations ultimately penalize the consumer because service is curtailed or, more important in the case of cable, service fails to continue expanding and innovating (e.g., increased number of channels, new types of channels such as sci-fi, cartoons, local sports, etc., and new types of programming such as NFL Football or Major League Baseball on cable).

Also, those who would make an argument for "tough" Federal discipline tend to assume incorrectly that Federal regulatory officials have greater levels of skill and resources than those available to local businessmen. This convenient assumption of omnipotence presumes that Federal officials can readily "detect" when a local business submission laden with data on costs, prices and sales volume has been "creatively massaged" so as to justify a greater level of price increase.

For those who make this argument, I would make the following points: any effort at a Federal agency level to staff up so as to match private sector staffing will not be approved either by OMB or by the Congress; any approach which, however inadvertently, challenges the private sector to be more creative in accommodating an existing Federal standard to a current, local business imperative will prove once again that the local businessman will find a way to get the job done.

I make this point most strongly for those who still hear the siren song of Federally-dictated, cost-plus regulation. When I managed the U.S. Council on Wage and Price Stability in the 1970's, the agency had on loan, at any one point in time, more than forty absolutely first-rate macro and micro economists from more than twenty of the nation's universities with the most highly regarded economics departments. If you are asking for a public sector workforce that could match the private sector in evaluating cost, price and sales data, it is in all probability a Federal-level workforce whose size and skill will not be matched again, at least in the near future. Nevertheless, when it came to the Council's ability "to read" cost, price and sales data from sophisticated private-sector companies, rarely could the Council penetrate either the locally-driven nuances of the data or the sheer volume of the data. All too typically, the Federal Government found that later a company "overcharged" only because a local consumer, vendor or competitor complained and the local media picked it up -- not because the Federal regulatory process detected the supposed "overcharge".

One can anticipate objections to or fears of the Local Service Price Index approach which will bridge categories (2) and (3) listed above. A fear might be which entity, the cable company or the city, bears responsibility for preparation of the index. The fear being that if the cable company contracts for the preparation of the index, then its validity could be brought into question. A solution would seem to be that the city have the responsibility to contract for preparation of the index with the cable company responsible for offsetting the cost for such preparation as a cost of regulation. An objection might be as to what items are included in the local price index. The Commission has set forward on p. 25 some of the items a local index would measure. It would be incumbent on the city to include the prices on services that are readily available in the community.

I make the above points to remind those who would criticize a locally-based regulatory approach that buying and selling is local, that price increases are local and that the Federal Government is inherently unable to regulate an infinite number of widely different local actions.

For all of the above reasons, I support the Commission's tentative proposal to adopt the locally-driven benchmark-Local Service Price Index approach.

Sincerely,

William Lilley

William Lilley III